

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1717

AN ACT to amend the Indiana Code concerning financial institutions and commercial law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-6-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) Beginning July 1, 2005, the unit shall do the following:

- (1) Investigate deceptive acts in connection with mortgage lending.
- (2) Investigate violations of IC 24-9.
- (3) Institute appropriate administrative and civil actions to redress:
 - (A) deceptive acts in connection with mortgage lending; and
 - (B) violations of IC 24-5-0.5 and IC 24-9.
- (4) Cooperate with federal, state, and local law enforcement agencies in the investigation of **the following**:
 - (A) Deceptive acts in connection with mortgage lending.
 - (B) Criminal violations involving deceptive acts in connection with mortgage lending. ~~and~~
 - (C) Violations of IC 24-5-0.5 and IC 24-9.
 - (D) **Violations of:**
 - (i) **the federal Truth in Lending Act (15 U.S.C. 1601 et seq.);**
 - (ii) **the Real Estate Settlement Procedures Act (12 U.S.C.**

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2601 et seq.); and

(iii) any other federal laws or regulations concerning mortgage lending.

To the extent authorized by federal law, the unit may enforce compliance with the federal statutes or regulations described in this clause or refer suspected violations of the statutes or regulations to the appropriate federal regulatory agencies.

(b) The attorney general shall adopt rules under IC 4-22-2 to the extent necessary to organize the unit.

SECTION 2. IC 4-6-12-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10. (a) Beginning in 2008, the unit shall, after June 30 and before November 1 of each year, report to the legislative council on the following:**

- (1) The unit's budget for the most recent state fiscal year.**
- (2) The unit's actual income and expenses during the most recent state fiscal year.**
- (3) The projected budget required by the unit to carry out its duties under this chapter during the current state fiscal year.**
- (4) The unit's staffing during the most recent fiscal year, including information on:**
 - (A) the number of employees employed by the unit and a description of their responsibilities; and**
 - (B) any vacant positions.**
- (5) The unit's projected staffing needs during the current state fiscal year.**
- (6) The number and types of complaints received by the unit, including a description of:**
 - (A) the number of complaints resolved; and**
 - (B) the number of complaints outstanding.**
- (7) Any recommendations for legislation needed to address mortgage lending or deceptive acts in connection with mortgage lending.**

(b) A report to the legislative council under this section must be in an electronic format under IC 5-14-6.

SECTION 3. IC 4-33-2-11.6, AS ADDED BY P.L.170-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 11.6. "Law enforcement agency" means any of the following:**

- (1) The gaming agents of the Indiana gaming commission.**
- (2) The state police department.**

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(3) The conservation officers of the department of natural resources.

(4) The state excise police of the alcohol and tobacco commission.

(5) The enforcement department of the securities division of the office of the secretary of state.

SECTION 4. IC 5-2-1-9, AS AMENDED BY SEA 526-2007, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) The board shall adopt in accordance with IC 4-22-2 all necessary rules to carry out the provisions of this chapter. The rules, which shall be adopted only after necessary and proper investigation and inquiry by the board, shall include the establishment of the following:

(1) Minimum standards of physical, educational, mental, and moral fitness which shall govern the acceptance of any person for training by any law enforcement training school or academy meeting or exceeding the minimum standards established pursuant to this chapter.

(2) Minimum standards for law enforcement training schools administered by towns, cities, counties, law enforcement training centers, agencies, or departments of the state.

(3) Minimum standards for courses of study, attendance requirements, equipment, and facilities for approved town, city, county, and state law enforcement officer, police reserve officer, and conservation reserve officer training schools.

(4) Minimum standards for a course of study on cultural diversity awareness that must be required for each person accepted for training at a law enforcement training school or academy.

(5) Minimum qualifications for instructors at approved law enforcement training schools.

(6) Minimum basic training requirements which law enforcement officers appointed to probationary terms shall complete before being eligible for continued or permanent employment.

(7) Minimum basic training requirements which law enforcement officers appointed on other than a permanent basis shall complete in order to be eligible for continued employment or permanent appointment.

(8) Minimum basic training requirements which law enforcement officers appointed on a permanent basis shall complete in order to be eligible for continued employment.

(9) Minimum basic training requirements for each person accepted for training at a law enforcement training school or

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academy that include six (6) hours of training in interacting with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities, to be provided by persons approved by the secretary of family and social services and the board.

(10) Minimum standards for a course of study on human and sexual trafficking that must be required for each person accepted for training at a law enforcement training school or academy and for inservice training programs for law enforcement officers. The course must cover the following topics:

- (A) Examination of the human and sexual trafficking laws (IC 35-42-3.5).
- (B) Identification of human and sexual trafficking.
- (C) Communicating with traumatized persons.
- (D) Therapeutically appropriate investigative techniques.
- (E) Collaboration with federal law enforcement officials.
- (F) Rights of and protections afforded to victims.
- (G) Providing documentation that satisfies the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Form I-914, Supplement B) requirements established under federal law.
- (H) The availability of community resources to assist human and sexual trafficking victims.

(b) Except as provided in subsection (l), a law enforcement officer appointed after July 5, 1972, and before July 1, 1993, may not enforce the laws or ordinances of the state or any political subdivision unless the officer has, within one (1) year from the date of appointment, successfully completed the minimum basic training requirements established under this chapter by the board. If a person fails to successfully complete the basic training requirements within one (1) year from the date of employment, the officer may not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until the officer has successfully completed the training requirements. This subsection does not apply to any law enforcement officer appointed before July 6, 1972, or after June 30, 1993.

(c) Military leave or other authorized leave of absence from law enforcement duty during the first year of employment after July 6, 1972, shall toll the running of the first year, which shall be calculated by the aggregate of the time before and after the leave, for the purposes of this chapter.

(d) Except as provided in subsections (e), (l), ~~and (q)~~, **and (r)**, a law

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enforcement officer appointed to a law enforcement department or agency after June 30, 1993, may not:

- (1) make an arrest;
- (2) conduct a search or a seizure of a person or property; or
- (3) carry a firearm;

unless the law enforcement officer successfully completes, at a board certified law enforcement academy or at a law enforcement training center under section 10.5 or 15.2 of this chapter, the basic training requirements established by the board under this chapter.

(e) This subsection does not apply to:

- (1) a gaming agent employed as a law enforcement officer by the Indiana gaming commission; **or**

(2) an:

(A) attorney; or

(B) investigator;

designated by the securities commissioner as a police officer of the state under IC 23-2-1-15(i).

Before a law enforcement officer appointed after June 30, 1993, completes the basic training requirements, the law enforcement officer may exercise the police powers described in subsection (d) if the officer successfully completes the pre-basic course established in subsection (f). Successful completion of the pre-basic course authorizes a law enforcement officer to exercise the police powers described in subsection (d) for one (1) year after the date the law enforcement officer is appointed.

(f) The board shall adopt rules under IC 4-22-2 to establish a pre-basic course for the purpose of training:

- (1) law enforcement officers;
- (2) police reserve officers (as described in IC 36-8-3-20); and
- (3) conservation reserve officers (as described in IC 14-9-8-27);

regarding the subjects of arrest, search and seizure, the lawful use of force, and the operation of an emergency vehicle. The pre-basic course must be offered on a periodic basis throughout the year at regional sites statewide. The pre-basic course must consist of at least forty (40) hours of course work. The board may prepare the classroom part of the pre-basic course using available technology in conjunction with live instruction. The board shall provide the course material, the instructors, and the facilities at the regional sites throughout the state that are used for the pre-basic course. In addition, the board may certify pre-basic courses that may be conducted by other public or private training entities, including postsecondary educational institutions.

(g) The board shall adopt rules under IC 4-22-2 to establish a

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mandatory inservice training program for police officers. After June 30, 1993, a law enforcement officer who has satisfactorily completed basic training and has been appointed to a law enforcement department or agency on either a full-time or part-time basis is not eligible for continued employment unless the officer satisfactorily completes the mandatory inservice training requirements established by rules adopted by the board. Inservice training must include training in interacting with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities, to be provided by persons approved by the secretary of family and social services and the board, and training concerning human and sexual trafficking. The board may approve courses offered by other public or private training entities, including postsecondary educational institutions, as necessary in order to ensure the availability of an adequate number of inservice training programs. The board may waive an officer's inservice training requirements if the board determines that the officer's reason for lacking the required amount of inservice training hours is due to either of the following:

- (1) An emergency situation.
- (2) The unavailability of courses.

(h) The board shall also adopt rules establishing a town marshal basic training program, subject to the following:

- (1) The program must require fewer hours of instruction and class attendance and fewer courses of study than are required for the mandated basic training program.
- (2) Certain parts of the course materials may be studied by a candidate at the candidate's home in order to fulfill requirements of the program.
- (3) Law enforcement officers successfully completing the requirements of the program are eligible for appointment only in towns employing the town marshal system (IC 36-5-7) and having not more than one (1) marshal and two (2) deputies.
- (4) The limitation imposed by subdivision (3) does not apply to an officer who has successfully completed the mandated basic training program.
- (5) The time limitations imposed by subsections (b) and (c) for completing the training are also applicable to the town marshal basic training program.

(i) The board shall adopt rules under IC 4-22-2 to establish an executive training program. The executive training program must include training in the following areas:

- (1) Liability.

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- (2) Media relations.
- (3) Accounting and administration.
- (4) Discipline.
- (5) Department policy making.
- (6) Lawful use of force.
- (7) Department programs.
- (8) Emergency vehicle operation.
- (9) Cultural diversity.

(j) A police chief shall apply for admission to the executive training program within two (2) months of the date the police chief initially takes office. A police chief must successfully complete the executive training program within six (6) months of the date the police chief initially takes office. However, if space in the executive training program is not available at a time that will allow completion of the executive training program within six (6) months of the date the police chief initially takes office, the police chief must successfully complete the next available executive training program that is offered after the police chief initially takes office.

(k) A police chief who fails to comply with subsection (j) may not continue to serve as the police chief until completion of the executive training program. For the purposes of this subsection and subsection (j), "police chief" refers to:

- (1) the police chief of any city;
- (2) the police chief of any town having a metropolitan police department; and
- (3) the chief of a consolidated law enforcement department established under IC 36-3-1-5.1.

A town marshal is not considered to be a police chief for these purposes, but a town marshal may enroll in the executive training program.

(l) A fire investigator in the division of fire and building safety appointed after December 31, 1993, is required to comply with the basic training standards established under this chapter.

(m) The board shall adopt rules under IC 4-22-2 to establish a program to certify handgun safety courses, including courses offered in the private sector, that meet standards approved by the board for training probation officers in handgun safety as required by IC 11-13-1-3.5(3).

(n) The board shall adopt rules under IC 4-22-2 to establish a refresher course for an officer who:

- (1) is hired by an Indiana law enforcement department or agency as a law enforcement officer;

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- (2) worked as a full-time law enforcement officer for at least one (1) year before the officer is hired under subdivision (1);
- (3) has not been employed as a law enforcement officer for at least two (2) years and less than six (6) years before the officer is hired under subdivision (1) due to the officer's resignation or retirement; and
- (4) completed a basic training course certified by the board before the officer is hired under subdivision (1).

(o) An officer to whom subsection (n) applies must successfully complete the refresher course described in subsection (n) not later than six (6) months after the officer's date of hire, or the officer loses the officer's powers of:

- (1) arrest;
- (2) search; and
- (3) seizure.

(p) A law enforcement officer who:

- (1) has completed a basic training course certified by the board; and
- (2) has not been employed as a law enforcement officer in the six (6) years before the officer is hired as a law enforcement officer;

is not eligible to attend the refresher course described in subsection (n) and must repeat the full basic training course to regain law enforcement powers.

(q) This subsection applies only to a gaming agent employed as a law enforcement officer by the Indiana gaming commission. A gaming agent appointed after June 30, 2005, may exercise the police powers described in subsection (d) if:

- (1) the agent successfully completes the pre-basic course established in subsection (f); and
- (2) the agent successfully completes any other training courses established by the Indiana gaming commission in conjunction with the board.

(r) This subsection applies only to a securities enforcement officer designated as a law enforcement officer by the securities commissioner. A securities enforcement officer may exercise the police powers described in subsection (d) if:

- (1) the securities enforcement officer successfully completes the pre-basic course established in subsection (f); and**
- (2) the securities enforcement officer successfully completes any other training courses established by the securities commissioner in conjunction with the board.**

SECTION 5. IC 23-2-2.5-34 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 34. **(a) If in the opinion of it appears to the commissioner that:**

(1) the offer of any franchise is subject to registration under this chapter and it is being, or it has been, offered for sale without such offer first being registered; or

(2) a person has engaged in or is about to engage in an act, a practice, or a course of business constituting a violation of this chapter or a rule or an order under this chapter;

the commissioner may order the franchisor or offeror of such franchise to cease and desist from the further offer or sale of such franchise unless and until such offer has been registered under this chapter. If, after such an order has been made, a request for a hearing is filed in writing by the person to whom such order was directed, a hearing shall be held to commence within fifteen (15) days after the request is made, unless the person affected consents to a later date. **investigate and may issue, with or without a prior hearing, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and an opportunity for hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter. In addition to all other remedies, the commissioner may bring an action in the name of and on behalf of the state against any person participating in or about to participate in a violation of this chapter, to enjoin the person from continuing or doing an act furthering a violation of this chapter and may obtain the appointment of a receiver or conservator. Upon a proper showing by the commissioner, the court shall enter an order of the commissioner directing rescission, restitution, or disgorgement against a person who has violated this chapter or a rule or order under this chapter.**

(b) Upon the issuance of an order or a notice by the commissioner under subsection (a), the commissioner shall promptly notify the respondent of the following:

(1) That the order or notice has been issued.

(2) The reasons the order or notice has been issued.

(3) That upon the receipt of a written request the matter will be set for a hearing to commence not later than forty-five (45) business days after the commissioner receives the request, unless the respondent consents to a later date.

If the respondent does not request a hearing and the commissioner

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does not order a hearing, the order or notice will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of the hearing, may modify or vacate the order or extend it until final determination.

(c) In a final order, the commissioner may charge the costs of an investigation or a proceeding conducted in connection with a violation of:

(1) this chapter; or

(2) a rule or an order adopted or issued under this chapter; to be paid as directed by the commissioner in the order.

(d) In a proceeding in a circuit or superior court under this section, the commissioner is entitled to recover all costs and expenses of investigation to which the commissioner would be entitled in an administrative proceeding, and the court shall include the costs in its final judgment.

(e) If the commissioner determines, after notice and opportunity for a hearing, that a person has violated this chapter, the commissioner may, in addition to or instead of all other remedies, impose a civil penalty upon the person in an amount not to exceed ten thousand dollars (\$10,000) for each violation. An appeal from the decision of the commissioner imposing a civil penalty under this subsection may be taken by an aggrieved party under section 44 of this chapter.

(f) The commissioner may bring an action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under subsection (e).

(g) Penalties collected under this section shall be deposited in the securities division enforcement account established under IC 23-2-1-15(c).

SECTION 6. IC 23-2-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) As used in this chapter, "certificate of registration" means a certificate issued by the commissioner authorizing an individual to engage in origination activities on behalf of a licensee.

(b) As used in this chapter, "creditor" means a person:

- (1) that loans funds of the person in connection with a loan; and
- (2) to whom the loan is initially payable on the face of the note or contract evidencing the loan.

(c) As used in this chapter, "license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.

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(d) As used in this chapter, "licensee" means a person that is issued a license under this chapter.

(e) As used in this chapter, "loan broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring a loan from a third party or any other person, whether or not the person seeking the loan actually obtains the loan. "Loan broker" does not include:

(1) any **supervised financial organization (as defined in IC 24-4.5-1-301(20))**, including a bank, savings bank, trust company, savings association, **or** credit union; ~~or~~

(2) any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

~~(2)~~ (3) any insurance company; or

~~(3)~~ (4) any person arranging financing for the sale of the person's product.

(f) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(g) As used in this chapter, "origination activities" means communication with or assistance of a borrower or prospective borrower in the selection of loan products or terms.

(h) As used in this chapter, "originator" means a person engaged in origination activities. The term "originator" does not include a person who performs origination activities for any entity that is not a loan broker under subsection (e).

(i) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(j) As used in this chapter, "registrant" means an individual who is registered:

(1) to engage in origination activities under this chapter; **or**

(2) **as a principal manager.**

(k) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls ~~any ownership ten percent (10%) or more of the equity~~ interest in a ~~person, loan broker licensed or required to be licensed under this chapter,~~ regardless of whether the person owns or controls the ~~ownership equity~~

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interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

(l) As used in this chapter, "principal manager" means an individual who:

(1) has at least three (3) years of experience:

(A) as a loan broker; or

(B) in financial services;

that is acceptable to the commissioner; and

(2) is principally responsible for the supervision and management of the employees and business affairs of a licensee.

SECTION 7. IC 23-2-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) Any person desiring to engage or continue in the loan brokerage business shall apply to the commissioner for a license under this chapter.

(b) An individual **desiring to be** employed by a licensee to engage in origination activities shall ~~be registered; by the licensee; with apply~~ to the commissioner **for registration** under ~~section 5(a)(6) and section 5(c)~~ of this chapter.

(c) Any individual desiring to be employed by a licensee as a principal manager shall apply to the commissioner for registration under this chapter.

SECTION 8. IC 23-2-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) An application for license or renewal of a license must contain:

(1) consent to service of process under subsection ~~(e)~~; **(h)**;

(2) evidence of the bond required in subsection ~~(b)~~; **(e)**;

(3) an application fee of ~~two four~~ hundred dollars ~~(\$200)~~; **(\$400), plus two hundred dollars (\$200) for each ultimate equitable owner;**

(4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment, unless waived by the commissioner under subsection (f);

(5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;

~~(6) a registration form setting forth the name, home address, home telephone number; and Social Security number of each employee or prospective employee of the applicant who is or who will be~~

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engaged in origination activities; and

(7) evidence that the license applicant's proposed registrants have completed the education requirements of section 21 of this chapter;

(6) the name and registration number for each originator to be employed by the licensee;

(7) the name and registration number for each principal manager; and

(8) for each ultimate equitable owner, the following information:

(1) The name of the ultimate equitable owner.

(2) The address of the ultimate equitable owner, including the home address of the ultimate equitable owner if the ultimate equitable owner is an individual.

(3) The telephone number of the ultimate equitable owner, including the home telephone number if the ultimate equitable owner is an individual.

(4) The ultimate equitable owner's Social Security number and date of birth, if the ultimate equitable owner is an individual.

(b) An application for registration as an originator shall be made on a registration form prescribed by the commissioner. The application must include the following information for the individual that seeks to be registered as an originator:

(1) The name of the individual.

(2) The home address of the individual.

(3) The home telephone number of the individual.

(4) The individual's Social Security number and date of birth.

(5) The name of the:

(A) licensee; or

(B) applicant for licensure;

for whom the individual seeks to be employed as an originator.

(6) Consent to service of process under subsection (h).

(7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.

(8) An application fee of one hundred dollars (\$100).

(9) All registration numbers previously issued to the individual under this chapter, if applicable.

(c) An application for registration as a principal manager shall be made on a registration form prescribed by the commissioner. The application must include the following information for the

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individual who seeks to be registered as a principal manager:

- (1) The name of the individual.
- (2) The home address of the individual.
- (3) The home telephone number of the individual.
- (4) The individual's Social Security number and date of birth.
- (5) The name of the:

- (A) licensee; or
- (B) applicant for licensure;

for whom the individual seeks to be employed as a principal manager.

- (6) Consent to service of process under subsection (h).
- (7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.
- (8) Evidence that the individual has at least three (3) years of experience in the:
 - (A) loan brokerage; or
 - (B) financial services; business.
- (9) An application fee of two hundred dollars (\$200).
- (10) All registration numbers previously issued to the individual, if applicable.

(d) The commissioner shall require an applicant for registration as:

- (1) an originator under subsection (b); or
- (2) a principal manager under subsection (c);

to pass a written examination prepared and administered by the commissioner or an agent appointed by the commissioner.

~~(b)~~ (e) A licensee must maintain a bond satisfactory to the commissioner in the amount of fifty thousand dollars (\$50,000), which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

~~(c)~~ (f) The commissioner shall issue a license **and license number** to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration **and registration number** authorizing the registrant to:

- (1) engage in origination activities; or
- (2) act as a principal manager;

whichever applies.

~~(d)~~ Licenses issued by the commissioner before January 1, 2001, shall be valid; and renewal of such licenses shall not be required until January 1, 2001. Individuals engaging in origination activities for a

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licensee before January 1, 2001, shall not be required to apply for and receive a certificate of registration until January 1, 2001. Except as otherwise provided in this subsection, licenses **(g) Licenses** and initial certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance. The education requirements of section 21 of this chapter shall first apply to applicants for issuance or renewal of licenses or registrations effective as of January 1, 2001.

(h) Every applicant for licensure **or registration** or for renewal of a license **or a registration** shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(i) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(j) Whenever an initial or a renewal application for a license **or registration** is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

(k) The commissioner shall require each:

- (1) equitable owner; and**
- (2) applicant for registration as:**
 - (A) an originator; or**
 - (B) a principal manager;**

to undergo a criminal background check at the expense of the equitable owner or applicant.

(l) The commissioner may check the qualifications, background, licensing status, and service history of each:

- (1) equitable owner; and**
- (2) applicant for registration as:**
 - (A) an originator; or**
 - (B) a principal manager;**

by accessing, upon availability, a multistate automated licensing system for mortgage brokers and originators, including the National Mortgage Licensing Database proposed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The equitable owner or the applicant shall pay any fees or costs associated with a check conducted under this subsection.

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SECTION 9. IC 23-2-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) To be enforceable, every contract for the services of a loan broker shall be in writing and signed by the contracting parties.

(b) At the time a contract for the services of a loan broker is signed, the loan broker shall provide a copy of the signed contract to each of the other parties to the contract.

(c) Every contract for the services of a loan broker must include the following statement:

"No statement or representation by a loan broker is valid or enforceable unless the statement or representation is in writing."

~~(c)~~ **(d)** This section does not apply to a contract that provides for the payment of referral fees by a lender or a third party.

SECTION 10. IC 23-2-5-9.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9.1. **(a) As used in this section, "appraisal company" means a person that employs or retains the services of one (1) or more real estate appraisers.**

(b) As used in this section, "immediate family", with respect to an individual, refers to:

- (1) the individual's spouse who resides in the individual's household; and**
- (2) any dependent child of the individual.**

(c) As used in this section, "real estate appraiser" means a person who:

- (1) is licensed as a real estate broker under IC 25-34.1 and performs real estate appraisals within the scope of the person's license; or**
- (2) holds a real estate appraiser license or certificate issued under IC 25-34.1-8.**

(d) A person licensed or registered under this chapter, or a person required to be licensed or registered under this chapter, shall not knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a mortgage loan.

(e) Except as provided in subsection (f), after June 30, 2007:

- (1) a person licensed or registered under this chapter, or a person required to be licensed or registered under this chapter;**
- (2) a member of the immediate family of:**

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- (A) a person licensed or registered under this chapter; or
- (B) a person required to be licensed or registered under this chapter; or
- (3) a person described in subdivision (1) or (2) in combination with one (1) or more other persons described in subdivision (1) or (2);

may not own or control a majority interest in an appraisal company.

(f) This subsection applies to a person or combination of persons described in subsection (e) who own or control a majority interest in an appraisal company on June 30, 2007. The prohibition set forth in subsection (e) does not apply to a person or combination of persons described in this subsection, subject to the following:

- (1) The interest in the appraisal company owned or controlled by the person or combination of persons described in subsection (e) shall not be increased after June 30, 2007.
- (2) The interest of a person licensed or registered under this chapter, or of a person required to be licensed or registered under this chapter, shall not be transferred to a member of the person's immediate family.
- (3) If the commissioner determines that any person or combination of persons described in subsection (e) has violated this chapter, the commissioner may order one (1) or more of the persons to divest their interest in the appraisal company. The commissioner may exercise the remedy provided by this subdivision in addition to, or as a substitute for, any other remedy available to the commissioner under this chapter.

SECTION 11. IC 23-2-5-10, AS AMENDED BY P.L.48-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule or an order under this chapter, the commissioner may investigate and may issue, with a prior hearing if there exists no substantial threat of immediate irreparable harm or without a prior hearing, if there exists a substantial threat of immediate irreparable harm, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or

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order under this chapter.

(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a), the commissioner shall promptly notify the respondent **and, if the subject of the order or notice is a registrant, the licensee for whom the registrant is employed:**

- (1) that the order or notice has been issued;
- (2) of the reasons the order or notice has been issued; and
- (3) that upon the receipt of a written request the matter will be set down for a hearing to commence within fifteen (15) business days after receipt of the request unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny, suspend, or revoke the license of a licensee or the registration of a registrant if the licensee, ~~or the registrant,~~ **or an ultimate equitable owner of a licensee:**

- (1) fails to maintain the bond required under section 5 of this chapter;
- (2) **has, within the most recent ten (10) years:**
 - (A) **been the subject of an adjudication or a determination by:**
 - (i) **a court with jurisdiction; or**
 - (ii) **an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry;****in Indiana or in any other jurisdiction; and**
 - (B) **been found, after notice and opportunity for hearing, to have violated the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal laws of Indiana or any other jurisdiction;**
- (3) **has:**
 - (A) **been denied the right to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry; or**
 - (B) **had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended;**

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by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization;

~~(2)~~ (4) is insolvent;

~~(3)~~ (5) has violated any provision of this chapter;

~~(4)~~ (6) has knowingly filed with the commissioner any document or statement ~~containing any that~~:

(A) contains a false representation of a material fact; ~~or omitting~~

(B) fails to state a material fact; or if

(C) contains a representation ~~that~~ becomes false after the filing but during the term of a license or certificate of registration as provided in subsection ~~(g)~~; ~~or (i)~~;

~~(5)~~ (7) has:

(A) been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime involving fraud or deceit; ~~or~~

(B) had a felony conviction (as defined in IC 35-50-2-1(b)) within five (5) years before the date of the application, renewal, or review;

(8) if the person is a licensee or principal manager, has failed to reasonably supervise the person's originators or employees to ensure their compliance with this chapter;

(9) is on the most recent tax warrant list supplied to the commissioner by the department of state revenue; or

(10) has engaged in dishonest or unethical practices in the loan broker business, as determined by the commissioner.

(d) The commissioner may do either of the following:

(1) Censure:

(A) a licensee;

(B) an officer, a director, or an ultimate equitable owner of a licensee;

(C) a registrant; or

(D) any other person;

who violates or causes a violation of this chapter.

(2) Permanently bar any person described in subdivision (1) from being:

(A) licensed or registered under this chapter; or

(B) employed by or affiliated with a person licensed or registered under this chapter;

if the person violates or causes a violation of this chapter.

~~(d)~~ (e) The commissioner may not enter a final order:

(1) denying, suspending, or revoking the license of a licensee or

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the registration of a registrant; **or**

(2) imposing other sanctions;

without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license or certificate of registration pending final determination of any proceeding under this section **or before any proceeding is initiated under this section.** Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that **it the summary order** has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence within fifteen (15) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

~~(e)~~ **(f)** IC 4-21.5 does not apply to a proceeding under this section.

~~(f)~~ **(g)** If ~~(1)~~ a licensee desires to have a previously unregistered employee begin engaging in origination activities; or (2) an individual who was previously registered under this chapter is employed by a registrant seeks to transfer the registrant's registration to another licensee who desires to have the registrant engage in origination activities **or serve as a principal manager, whichever applies,** the employer licensee registrant shall, within five (5) business days after the employee first ~~before the registrant~~ conducts origination activities **or serves as a principal manager for the new employer,** submit to the commissioner, on a form prescribed by the commissioner, ~~notice of the registrant's employment.~~ If the employee has not previously been registered, the licensee shall submit evidence that the employee has completed the education requirements of section 21 of this chapter: a registration application, as required by section 5 of this chapter.

(h) If the employment of a registrant is terminated, whether:

(1) voluntarily by the registrant; or

(2) by the licensee employing the registrant;

the licensee that employed the registrant shall, not later than five (5) days after the termination, notify the commissioner of the termination and the reasons for the termination.

~~(g)~~ **(i)** If a material fact or statement included in an application under this chapter changes after the application has been submitted, the

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applicant shall provide written notice to the commissioner of the change. The commissioner may revoke or refuse to renew the license or registration of any person who:

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or

(2) would not qualify for licensure or registration under this chapter as a result of ~~a~~ **the** change in **a** material fact or statement.

SECTION 12. IC 23-2-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 15. Any person who violates this chapter **or any rule or regulation adopted under this chapter**, in connection with a contract for the services of a loan broker, is liable to any person damaged by the violation, for the amount of the actual damages suffered, interest at the legal rate, and attorney's fees. If a person violates any provision of this chapter, **or any rule or regulation adopted under this chapter**, in connection with a contract for loan brokering services, the contract is void, and the prospective borrower is entitled to receive from the loan broker all sums paid to the loan broker.

SECTION 13. IC 23-2-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 16. **(a) Except as provided in subsection (b)**, a person who knowingly violates this chapter commits a Class D felony.

(b) A person commits a Class C felony if the person knowingly makes or causes to be made:

(1) in any document filed with or sent to the commissioner or the securities division; or

(2) in any proceeding, investigation, or examination under this chapter;

any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

SECTION 14. IC 23-2-5-18.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 18.5. Whenever a person licensed or registered under this chapter, or a person required to be licensed or registered under this chapter, has possession of funds belonging to others, including money received by or on behalf of a prospective borrower, the person licensed or registered under this chapter, or required to be licensed or registered under this chapter, shall:**

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- (1) upon request of the prospective borrower, account for any funds handled for the prospective borrower;
- (2) follow any reasonable and lawful instructions from the prospective borrower concerning the prospective borrower's funds; and
- (3) return any unspent funds of the prospective borrower to the prospective borrower in a timely manner.

SECTION 15. IC 23-2-5-19, AS AMENDED BY HEA 1555-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, 17, 18, and 21 of this chapter:

- (1) Any attorney while engaging in the practice of law.
- (2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).
- (3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.
- (4) Any broker-dealer, agent, or investment advisor registered under IC 23-19.
- (5) Any person that:
 - (A) procures;
 - (B) promises to procure; or
 - (C) assists in procuring;

a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).

- (6) Any community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from the Indiana housing and community development authority established by IC 5-20-1-3.
- (7) The Indiana housing and community development authority.
- (8) **Subject to subsection (e), and except as provided in subsection (f),** any person authorized to:

- (A) sell and service a loan for the Federal National Mortgage Association or the Federal Home Loan Mortgage Association;
- (B) issue securities backed by the Government National Mortgage Association;
- (C) make loans insured by the United States Department of Housing and Urban Development or the United States Department of Agriculture Rural Housing Service;

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(D) act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs; or
 (E) act as a correspondent of loans insured by the United States Department of Housing and Urban Development, **if the person closes at least twenty-five (25) such insured loans in Indiana during each calendar year.**

(9) Any person who is a creditor, or proposed to be a creditor, for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

(e) A person claiming an exemption under subsection (a)(8) shall, as a condition to receiving or maintaining the exemption, file a notice every twenty-four (24) months on a form acceptable to the commissioner. The notice required under this subsection must:

(1) provide the name and business address of each originator employed by the person to originate loans in Indiana;

(2) include all other information required by the commissioner; and

(3) be accompanied by a fee of four hundred dollars (\$400).

If any information included in a notice under this subsection changes after the notice has been submitted, the person shall provide written notice to the commissioner of the change. The commissioner's receipt of a notice under this subsection shall not be considered to be a determination or confirmation by the commissioner of the validity of the claimed exemption.

(f) An exemption described in subsection (a)(8) does not extend to:

(1) a subsidiary of the exempt person; or

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(2) an unaffiliated third party.

An exemption that applies to a person under subsection (a)(8)(D) does not extend to a registered United States Department of Veterans Affairs agent.

SECTION 16. IC 23-2-5-20.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 20.5. (a) A person licensed or required to be licensed as a loan broker under this chapter shall not employ a person to engage in origination activities unless the person is registered as an originator or a principal manager under this chapter. The registration of an originator or a principal manager is not effective during any period in which the originator or principal manager is not employed by a loan broker licensed under this chapter.**

(b) A person licensed or required to be licensed as a loan broker under this chapter shall not operate any principal or branch office of a loan brokerage business without employing a registered principal manager at that location.

SECTION 17. IC 23-2-5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 21. (a) Except as provided under section 5(d) of this chapter, A person applying for a an initial license or certificate of registration must provide to the commissioner evidence that during the twenty-four (24) month period immediately preceding the application that the person completed at least twenty-four (24) hours of academic instruction, acceptable to the commissioner, related to the loan brokerage business. A person renewing a license or certificate of registration must provide to the commissioner evidence that during the twenty-four (24) month period immediately preceding the application that the person completed at least twelve (12) hours of academic instruction, acceptable to the commissioner, related to the loan brokerage business. To maintain a license or registration under this chapter, a person must provide to the commissioner evidence that the person has completed at least six (6) hours of academic instruction that is:**

(1) acceptable to the commissioner; and

(2) related to the loan brokerage business;

during each calendar year after the year in which the license or registration was initially issued.

(b) In determining the acceptability of academic instruction the commissioner shall give consideration to approval of a licensee's internal academic instruction programs completed by employees.

(c) In determining the acceptability of an education course, the

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commissioner may require a fee, in an amount prescribed by the commissioner by rule or order, for the commissioner's review of the course.

SECTION 18. IC 23-2-5-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 23. Any document delivered or required to be delivered by a person licensed or required to be licensed to a borrower or prospective borrower must contain:**

- (1) the license number of the loan broker; and**
 - (2) the registration number of each:**
 - (A) originator; or**
 - (B) principal manager;**
- who had contact with the file.**

SECTION 19. IC 23-19-6-5, AS ADDED BY HEA 1555-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 5. (a) The commissioner may:**

- (1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this article and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;**
- (2) by rule, define terms, whether or not used in this article, but those definitions may not be inconsistent with this article; and**
- (3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.**

(b) Under this article, a rule or form may not be adopted or amended, or an order issued or amended, unless the commissioner finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this article.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1938 (15 U.S.C. 78o(h)) and Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), the commissioner may require that a financial statement filed under this article be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this article. A rule adopted or order issued under this article may establish:

- (1) subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) and Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), the form and content of financial statements required under this article;**

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(2) whether unconsolidated financial statements must be filed;
and

(3) whether required financial statements must be audited by an independent certified public accountant.

(d) The commissioner may provide interpretative opinions or issue determinations that the commissioner will not institute a proceeding or an action under this article against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this article. The commissioner shall charge a fee of one hundred dollars (\$100) for an interpretive opinion or determination.

(e) A penalty under this article may not be imposed for, and liability does not arise from, conduct that is engaged in or omitted in good faith and reasonably believed to be conforming to a rule, form, or order of the commissioner under this article.

(f) A hearing in an administrative proceeding under this article must be conducted in public unless the commissioner ~~for good cause consistent with this article determines that the hearing will not be so conducted.~~ **finds a statutory basis that would allow the hearing to be closed to the public.**

SECTION 20. IC 23-19-6-7, AS ADDED BY HEA 1555-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) Except as otherwise provided in subsection (b), records obtained by the commissioner or filed under this article, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for ~~public examination.~~ **inspection and copying.**

(b) The following records are ~~not public records~~ **confidential** and are not available for public ~~examination~~ **inspection and copying** under subsection (a):

(1) A record obtained by the commissioner in connection with an audit or inspection under IC 23-19-4-11(d) or an investigation under section 2 of this chapter.

(2) A part of a record filed in connection with a registration statement under IC 23-19-3-1 and IC 23-19-3-3 through IC 23-19-3-5 or a record under IC 23-19-4-11(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law and approved by the commissioner.

(3) A record that is not required to be provided to the commissioner or filed under this article and is provided to the commissioner only on the condition that the record will not be

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subject to public examination or disclosure.

(4) ~~A nonpublic record~~ **Confidential records** received from a person specified in section 8(a) of this chapter.

(5) Any Social Security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed.

(6) A record obtained by the commissioner through a designee of the commissioner that a rule or order under this article determines has been:

(A) expunged from the commissioner's records by the designee; or

(B) determined to be ~~nonpublic or nondisclosable~~ **confidential** by that designee if the commissioner finds the determination to be ~~in the public interest and for the protection of investors.~~ **based on statutory authority.**

(c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 8(a) of this chapter, the commissioner may disclose a record obtained in connection with an audit or inspection under IC 23-19-4-11(d) or a record obtained in connection with an investigation under section 2 of this chapter.

SECTION 21. IC 25-11-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) Upon the filing with the secretary of state, by any interested person, of a verified written complaint which charges any licensee hereunder with a specific violation of any of the provisions of this chapter, the secretary of state shall cause an investigation of the complaint to be made. If the investigation shows probable cause for the revocation or suspension of the license, the secretary of state shall send a written notice to such licensee, stating in such notice the alleged grounds for the revocation or suspension and fixing a time and place for the hearing thereof. The hearing shall be held not less than five (5) days nor more than twenty (20) days from the time of the mailing of ~~said~~ the notice, **unless the parties consent otherwise.** The secretary of state may subpoena witnesses, books, and records and may administer oaths. The licensee may appear and defend against such charges in person or by counsel. If upon such hearing the secretary of state finds the charges to be true, the secretary of state shall either revoke or suspend the license of the licensee. Suspension shall be for a time certain and in no event for a longer period than one (1) year. No license shall be issued to any person whose license has been revoked for a period of two (2) years

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from the date of revocation. Reapplication for a license, after revocation as provided, shall be made in the same manner as provided in this chapter for an original application for a license.

(b) Whenever it appears to the secretary of state that a person has engaged in or is about to engage in an act or practice constituting a violation of this chapter or a rule or order under this chapter, the secretary of state may investigate and may issue, with or without a prior hearing, orders and notices as the secretary of state determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter. In addition to all other remedies, the secretary of state may bring an action in the name of and on behalf of the state against the person and any other person participating in or about to participate in a violation of this chapter, to enjoin the person from continuing or doing an act furthering a violation of this chapter and may obtain the appointment of a receiver or conservator. Upon a proper showing by the secretary of state, the court shall enter an order of the secretary of state directing rescission, restitution, or disgorgement to a person who has violated this chapter or a rule or order under this chapter.

(c) Upon the issuance of an order or a notice by the secretary of state under subsection (b), the secretary of state shall promptly notify the respondent of the following:

- (1) That the order or notice has been issued.**
- (2) The reasons the order or notice has been issued.**
- (3) That upon the receipt of a written request the matter will be set for a hearing to commence not less than five (5) days and not more than twenty (20) days after the secretary of state receives the request, unless the parties consent otherwise.**

If the respondent does not request a hearing and the secretary of state does not order a hearing, the order or notice will remain in effect until it is modified or vacated by the secretary of state. If a hearing is requested or ordered, the secretary of state, after giving notice of the hearing, may modify or vacate the order or extend it until final determination.

(d) In a proceeding in a circuit or superior court under this section, the secretary of state is entitled to recover all costs and

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expenses of investigation to which the secretary of state would be entitled in an administrative proceeding under IC 23-2-1-16(d), and the court shall include the costs in its final judgment.

(e) For the purpose of any investigation or proceeding under this chapter, the secretary of state may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the secretary of state considers material to the inquiry.

(f) Upon order of the secretary of state in any hearing, a deposition may be taken of any witness. A deposition under this chapter shall be:

- (1) conducted in the manner prescribed by law for depositions in civil actions; and
- (2) made returnable to the secretary of state.

(g) If any person fails to obey a subpoena, the circuit or superior court, upon application by the secretary of state, may issue to the person an order requiring the person to appear before the secretary of state to produce documentary evidence, if so ordered, or to give evidence concerning the matter under investigation.

(h) A person is not excused from:

- (1) attending any hearing or testifying before the secretary of state; or
- (2) producing any document or record;

in obedience to a subpoena of the secretary of state, or in any proceeding instituted by the secretary of state, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, a person may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing about which the person is compelled, after validly claiming the person's privilege against self-incrimination, to testify or produce evidence, documentary or otherwise.

SECTION 22. IC 25-11-1-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 14. The secretary of state may delegate any or all of the rights, duties, or obligations of the secretary of state under this chapter to:**

- (1) the securities commissioner appointed under IC 23-2-1-15(a); or

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(2) any other designee under the supervision and control of the secretary of state.

SECTION 23. IC 25-11-1-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 15. (a) If the secretary of state determines, after notice and opportunity for a hearing, that a person has violated this chapter, the secretary of state may, in addition to or instead of all other remedies, impose a civil penalty upon the person in an amount not to exceed ten thousand dollars (\$10,000) for each violation. An appeal from the decision of the secretary of state imposing a civil penalty under this subsection may be taken by an aggrieved party under section 16 of this chapter.**

(b) The secretary of state may bring an action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under subsection (a).

(c) Penalties collected under this section shall be deposited in the securities division enforcement account established under IC 23-2-1-15(c).

SECTION 24. IC 25-11-1-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 16. (a) An appeal may be taken from a final order of the secretary of state under this chapter as follows:**

(1) By an applicant for a license under this chapter, from a final order of the secretary of state concerning the application.

(2) By a licensee, from a final order of the secretary of state affecting the licensee's license under this chapter.

(3) By any person against whom a civil penalty is imposed under section 15 of this chapter, from the final order of the secretary of state imposing the civil penalty.

(4) By any person who is named as a respondent in an investigation or a proceeding under section 9 of this chapter, from a final order of the secretary of state under section 9 of this chapter. An appeal under this subdivision may be taken in:

(A) the circuit or superior court of Marion County; or

(B) the circuit or superior court of the county in which the appellant resides or maintains a place of business.

(b) A person who seeks to appeal an order of the secretary of state under this section must serve the secretary of state with the

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following not later than twenty (20) days after the entry of the order:

- (1) A written notice of the appeal stating:
 - (A) the court in which the appeal will be taken; and
 - (B) the grounds on which a reversal of the secretary of state's final order is sought.
- (2) A written demand from the appellant for:
 - (A) a certified transcript of the record; and
 - (B) all papers on file in the secretary of state's office; concerning the order from which the appeal is being taken.
- (3) A bond in the penal sum of five hundred dollars (\$500) payable to the state with sufficient surety to be approved by the secretary of state, conditioned upon:
 - (A) the faithful prosecution of the appeal to final judgment; and
 - (B) the payment of all costs that are adjudged against the appellant.

(c) Not later than ten (10) days after the secretary of state is served with the items described in subsection (b), the secretary of state shall make, certify, and deliver to the appellant the transcript described in subsection (b)(2)(A). Not later than five (5) days after the appellant receives the transcript under this subsection, the appellant shall file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The secretary of state may appear before the court, file any motion or pleading in the matter, and form the issue. The cause shall be entered on the court's calendar to be heard de novo and shall be given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent oral or written evidence concerning the order of the secretary of state from which the appeal is taken. If the order of the secretary of state is reversed, the court shall in its mandate specifically direct the secretary of state as to the secretary of state's further action in the matter. The secretary of state is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant may, after thirty (30) days from the date the order is affirmed, file a new application for a license under this chapter if the application is not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by

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the court. An appeal may be taken from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

(e) IC 4-21.5 does not apply to a proceeding under this chapter.

SECTION 25. IC 35-41-1-17, AS AMENDED BY P.L.1-2006, SECTION 530, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. (a) "Law enforcement officer" means:

- (1) a police officer, sheriff, constable, marshal, prosecuting attorney, special prosecuting attorney, special deputy prosecuting attorney, **the securities commissioner**, or the inspector general;
- (2) a deputy of any of those persons;
- (3) an investigator for a prosecuting attorney or for the inspector general;
- (4) a conservation officer; ~~or~~
- (5) an enforcement officer of the alcohol and tobacco commission; **or**

(6) an enforcement officer of the securities division of the office of the secretary of state.

(b) "Federal enforcement officer" means any of the following:

- (1) A Federal Bureau of Investigation special agent.
- (2) A United States Marshals Service marshal or deputy.
- (3) A United States Secret Service special agent.
- (4) A United States Fish and Wildlife Service special agent.
- (5) A United States Drug Enforcement Agency agent.
- (6) A Bureau of Alcohol, Tobacco, Firearms and Explosives agent.
- (7) A United States Forest Service law enforcement officer.
- (8) A United States Department of Defense police officer or criminal investigator.
- (9) A United States Customs Service agent.
- (10) A United States Postal Service investigator.
- (11) A National Park Service law enforcement commissioned ranger.
- (12) United States Department of Agriculture, Office of Inspector General special agent.
- (13) A United States ~~Immigration and Naturalization Service~~ **Citizenship and Immigration Services** special agent.
- (14) An individual who is:
 - (A) an employee of a federal agency; and
 - (B) authorized to make arrests and carry a firearm in the performance of the individual's official duties.

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SECTION 26. [EFFECTIVE JULY 1, 2007]: **Sec. 19. (a) This SECTION applies instead of IC 23-2-5-19. The following persons are exempt from the requirements of sections 4, 5, 6, 9, 17, 18, and 21 of this chapter:**

- (1) Any attorney while engaging in the practice of law.**
- (2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).**
- (3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.**
- (4) Any broker-dealer, agent, or investment advisor registered under IC 23-2-1.**
- (5) Any person that:**
 - (A) procures;**
 - (B) promises to procure; or**
 - (C) assists in procuring;****a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).**
- (6) Any community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from the Indiana housing and community development authority established by IC 5-20-1-3.**
- (7) The Indiana housing and community development authority.**
- (8) Subject to subsection (e), and except as provided in subsection (f), any person authorized to:**
 - (A) sell and service a loan for the Federal National Mortgage Association or the Federal Home Loan Mortgage Association;**
 - (B) issue securities backed by the Government National Mortgage Association;**
 - (C) make loans insured by the United States Department of Housing and Urban Development or the United States Department of Agriculture Rural Housing Service; or**
 - (D) act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs.**
 - (E) act as a correspondent of loans insured by the United**

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States Department of Housing and Urban Development, if the person closes at least twenty-five (25) such insured loans in Indiana during each calendar year.

(9) Any person who is a creditor, or proposed to be a creditor, for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

(e) A person claiming an exemption under subsection (a)(8) shall, as a condition to receiving or maintaining the exemption, file a notice every twenty-four (24) months on a form acceptable to the commissioner. The notice required under this subsection must:

(1) provide the name and business address of each originator employed by the person to originate loans in Indiana;

(2) include all other information required by the commissioner; and

(3) be accompanied by a fee of two hundred dollars (\$200).

If any information included in a notice under this subsection changes after the notice has been submitted, the person shall provide written notice to the commissioner of the change. The commissioner's receipt of a notice under this subsection shall not be considered to be a determination or confirmation by the commissioner of the validity of the claimed exemption.

(f) An exemption described in subsection (a)(8) does not extend to:

(1) a subsidiary of the exempt person; or

(2) an unaffiliated third party.

An exemption that applies to a person under subsection (a)(8)(D)

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does not extend to a registered United States Department of Veterans Affairs agent.

(g) This SECTION expires June 30, 2008.

SECTION 27. [EFFECTIVE JULY 1, 2007] (a) The definitions in IC 23-2-5, as amended by this act, apply throughout this SECTION.

(b) IC 23-2-5, as amended by this act, applies to a person who applies for an initial:

- (1) license as a loan broker;
- (2) registration as an originator;
- (3) registration as a principal manager; or
- (4) exemption under IC 23-2-5-19, as amended by this act;

after June 30, 2007.

(c) Except as otherwise provided in this SECTION, IC 23-2-5, as amended by this act, applies to a person who:

- (1) is licensed as a loan broker under IC 23-2-5, before its amendment by this act; or
- (2) is registered as an originator under IC 23-2-5, before its amendment by this act;

after December 31, 2007.

(d) A person who:

- (1) is licensed as a loan broker under IC 23-2-5, before its amendment by this act; or
- (2) qualifies for an exemption under IC 23-2-5-19(a)(8)(E), before its amendment by this act, but does not qualify for an exemption under IC 23-2-5-19(a)(8)(E), after its amendment by this act;

must comply with IC 23-2-5-20.5(b) not later than July 1, 2008.

(e) A person who:

- (1) qualifies for an exemption under IC 23-2-5-19(a)(8)(E), before its amendment by this act; but
- (2) does not qualify for an exemption under IC 23-2-5-19(a)(8)(E), after its amendment by this act;

must comply with IC 23-2-5-4, as amended by this act, not later than January 1, 2008.

(f) A person who:

- (1) qualifies for an exemption under IC 23-2-5-19(a)(8)(A) through IC 23-2-5-19(a)(8)(D), before July 1, 2007; or
- (2) qualifies for an exemption under IC 23-2-5-19(a)(8)(E), both before and after its amendment by this act;

must comply with IC 23-2-5-19(e) not later than January 1, 2008.

(g) This SECTION expires January 1, 2009.

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SECTION 28. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "department" refers to the department of financial institutions established by IC 28-11-1-1.

(b) The department shall study the feasibility of assuming responsibility for regulating all:

- (1) loan brokers;
- (2) originators; and
- (3) principal managers;

required to be licensed or registered under IC 23-2-5 on the date of enactment of this act.

(c) In conducting the study required under subsection (b), the department shall determine the following:

(1) The costs and benefits of implementing a complaint based regulatory system, including:

- (A) the budget and staffing needs of the department;
- (B) the time required to take all necessary actions to implement the system; and
- (C) a comparison of the costs and benefits of implementing the system described in this subdivision with the costs and benefits of implementing a system described in subdivision (2).

(2) The costs and benefits of implementing an examination based regulatory system, including:

- (A) the budget and staffing needs of the department;
- (B) the time required to take all necessary actions to implement the system; and
- (C) a comparison of the costs and benefits of implementing the system described in this subdivision with the costs and benefits of implementing a system described in subdivision (1).

(d) In addition to conducting the required analyses under subsection (b), the department may study any other issues related to the licensing and regulation of loan brokers, originators, and principal managers that the department considers relevant to the department's ability to undertake the responsibilities described in this SECTION.

(e) The department shall provide:

- (1) status reports on the department's progress in conducting the study required by this SECTION; and
- (2) any preliminary data gathered or determinations made in conducting the study required by this SECTION;

as may be requested by the interim study committee on mortgage

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lending practices and home loan foreclosures established under this act.

(f) The department shall report its findings and any recommendations to the legislative council not later than November 1, 2007. The department's report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(g) This SECTION expires January 1, 2008.

SECTION 29. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commissioner" refers to the securities commissioner appointed under IC 23-2-1-15(a).

(b) "Division" refers to the securities division of the office of the secretary of state.

(c) Not later than November 1, 2007, the commissioner shall report to the legislative council on the regulation and:

(1) licensing of loan brokers; and

(2) registration of originators and principal managers; under IC 25-2-5, as amended by this act.

(d) The report required under subsection (c) must include information on the following:

(1) The budget and staffing needs of the division to implement IC 23-2-5, as amended by this act.

(2) Any additional actions needed to implement IC 23-2-5, as amended by this act, and the time needed by the division to complete the actions.

(3) The number of initial licenses and registrations issued by the commissioner under IC 25-2-5, as amended by this act, after June 30, 2007.

(4) Any challenges encountered or anticipated by the commissioner in implementing IC 25-2-5, as amended by this act.

(5) Any additional information that may be requested by:

(A) the legislative council; or

(B) the interim study committee on mortgage lending practices and home loan foreclosures established under this act.

(6) Any recommendations of the commissioner on the implementation of IC 25-2-5, as amended by this act.

(e) The commissioner's report to the legislative council under this SECTION must be in an electronic format under IC 5-14-6.

(f) This SECTION expires January 1, 2008.

SECTION 30. [EFFECTIVE UPON PASSAGE] (a) As used in this

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SECTION, "committee" refers to the interim study committee on mortgage lending practices and home loan foreclosures established by this SECTION.

(b) There is established the interim study committee on mortgage lending practices and home loan foreclosures. The committee shall study the following:

(1) The appropriateness of requiring state licensure for all mortgage lenders, loan brokers, originators, settlement service providers, and real estate appraisers.

(2) The appropriate state agency or regulatory body to oversee the regulation of mortgage lenders, loan brokers, originators, settlement service providers, and real estate appraisers.

(3) Other states' approaches to regulating mortgage lenders, loan brokers, originators, settlement service providers, and real estate appraisers. In examining the regulatory approaches of other states under this subdivision, the committee shall attempt to identify those approaches that:

(A) incorporate an efficient or streamlined regulatory framework; or

(B) otherwise represent best practices for state regulation of mortgage lenders, loan brokers, originators, settlement service providers, and real estate appraisers.

(4) The causes of home loan foreclosures in Indiana, including a study of the causes of home loan foreclosures with respect to new home construction in Indiana.

(5) Whether legislative or regulatory solutions exist to:

(A) prevent or reduce the number of home loan foreclosures in Indiana; and

(B) prevent or reduce the occurrence of fraudulent practices in the home loan industry.

(6) Issues concerning the referral of borrowers or potential borrowers to appraisal companies by mortgage lenders, loan brokers, originators, or settlement service providers that have an:

(A) ownership or investment interest in or compensation arrangement with an appraisal company; or

(B) immediate family member that has an ownership or investment interest in or compensation arrangement with an appraisal company.

(7) Issues concerning the referral of settlement service providers by mortgage lenders, loan brokers, or originators

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that have:

- (A) a business relationship or an ownership interest in a settlement service provider; or
 - (B) an immediate family member that has a business relationship or an ownership interest in a settlement service provider.
 - (8) The appropriateness of requiring a person licensed under IC 23-2-5 to notify the commissioner if the employment of a person registered under IC 23-2-5 is terminated.
 - (9) Other topics that the committee considers relevant in:
 - (A) examining mortgage lending practices and home loan foreclosures in Indiana; and
 - (B) devising solutions to the problems identified.
 - (c) The committee shall operate under the policies governing study committees adopted by the legislative council.
 - (d) The affirmative votes of a majority of the voting members appointed to the committee are required for the committee to take action on any measure, including final reports.
 - (e) The committee shall report its findings and any recommendations to the legislative council not later than November 1, 2007. The committee's report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.
 - (f) This SECTION expires January 1, 2008.
- SECTION 31. An emergency is declared for this act.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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